

IN THE MATTER OF

:

BEFORE THE

:

**COLUMBIA PRESBYTERIAN
CHURCH**

:

BOARD OF APPEALS

:

Petitioner

:

BA Case No. 08-031C

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DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on December 4, 2008, January 8, 2009, March 5, 2009, April 7, 2009, April 9, 2009 and April 23, 2009 to consider the application of Columbia Presbyterian Church, ("Petitioner") for conditional use approval to expand an existing religious facility in an R-20 (Residential: Single) zoning district, filed pursuant to Sections 131.B and 131.N.39 of the Howard County Zoning Regulations (the "Zoning Regulations").

Board members James Walsh, Albert Hayes, Kevin Doyle and Henry Eagles were present for and participated in all of the hearings. Board member Maurice Simpkins was present for all the hearings except the April 9, 2009 hearing. In accordance with Section 2.201(c) of the Board's Rules of Procedure, Board member Simpkins reviewed all of the evidence submitted and listened to a recording of the April 9, 2009 hearing for which he was not present. Barry M. Sanders served as counsel to the Board.

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. The Board members viewed the subject property, as required by the Zoning Regulations, and the hearing was conducted in accordance with the Board's Rules of Procedures. The following items were incorporated into the record by reference:

1. The Howard County Code;
2. The Howard County Charter;
3. The Howard County Zoning Regulations;
4. The various reports of the responding and reviewing agencies;
5. The Department of Planning and Zoning Technical Staff Report recommending approval dated July 21, 2008;
6. The General Plan for Howard County;
7. The General Plan of Highways;
8. The Petition and Plat and the material submitted with it.

Richard Talkin, Esquire, represented the Petitioner. David Chandler, Charles Alexander, Albert Edwards, John Householder, Lawrence Sefcik, Gerald Meyers and Clifford Lockyer testified in favor of the petition. Stephen Rice, William Rice, Donna Rice, Greg Williams, David Cowie, Joseph Guyton, Michael Backof, Katherine Backof, Jonathan Murray, Man Charurat, Sujata Rana, Kate Corrieveau and Bruce Corrieveau testified in opposition to the petition.

FINDINGS OF FACT

Based upon the testimony presented at the hearing, the Board makes the following Findings of Fact:

1. The Petitioner is the owner of the subject property, known as 10001 Clarksville Pike (MD 108), which is located in the 5th Election District 140 feet east of Ten Mills Road. It is referenced on Tax Map 30, Grid 8, as Parcel 223 (the "Property").
2. The Property is rectangular in shape and consists of 6.8 acres.
3. The Property is improved with a two-story brick church situated about 340 feet

south of Clarksville Pike and 37.7 feet from its east lot line. Behind the Church is a one-story frame building, behind which are several small accessory buildings. To the one-story building's east are two portable classrooms approved in 2000 as an enlargement to the religious facility through BA 00-43E. A wide private driveway near the Property's northwest corner provides access. It runs about 750 feet to the south, parallel to the west lot line. The driveway branches off at several points to provide access to a parking lot to the Church's front and side, two smaller lots along the driveway, and a larger lot comprising much of the Property's rear section. A large stormwater management pond is situated in the Property's rear, southwestern section and a second one is situated to the east of the front parking lot.

4. The topography of the Property is relatively level with a slight slope from the highest point at the northwest corner down to the lowest points near the southwest corner and also to the east of the front parking lot.

5. Vicinal properties include the following: The properties to the east, west and south are zoned NT (New Town). The property adjoining the northeast lot line and fronting on MD 108 is a wooded open space lot. The remaining adjoining properties are improved with single-family detached dwellings. The properties along the west lot line front on Ten Mills Road. To the north across MD 108 are Centennial Park and a residential lot improved with a single-family detached dwelling.

6. MD 108 in front of the Property has about 45 feet of paving within a variable width right-of-way. MD 108 has one westbound travel lane, a right turn lane from westbound MD 108 into Centennial Park and two eastbound lanes which transition to one lane further east of the Property. The posted speed limit is 45 miles per hour.

7. The DPZ technical staff report indicates that the estimated sight distance from the existing driveway entrance is more than 800 feet to the west and over 700 feet to the east. According to State Highway Administration data, the traffic volume on MD 108 west of Columbia Road was 23,333 average daily trips as of May 2006.

8. The Property is served by public water and sewer facilities.

9. The Property is designated "Residential Areas" on the Policies Map 2000-2020 of the 2000 General Plan.

10. MD 108 is depicted as a Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan.

11. The Property is the site of the Columbia Presbyterian Church which was developed in the early 1990's. At the time of the original Site Development Plan approval, it was intended that at some future date that the Church would be enlarged with an addition. The Petitioner requests conditional use approval for this long-planned enlargement. As depicted on the plan submitted to the Board, the Petitioner is proposing a two-story addition to the west and north of the existing Church. This proposed addition would contain approximately 17,763 square feet of floor area. The first level would be approximately 8,598 square feet in area and the second level would be roughly 9,165 square feet. In association with the construction of the addition, the Petitioner proposes to expand the current front parking lot to the east of the existing lot.

12. David Chandler, a Deacon and Trustee of Columbia Presbyterian Church, testified regarding the Petitioner's plans to expand its facility. Mr. Chandler testified and stated that the concept is to build a large addition to the north and west of the existing ministry center building and a bump-out on the south side. The plan shows the footprint

of ministry center as well as the respective new construction. The proposed expansion approximately doubles the facility space and the exterior building materials will be designed to match the existing building. The bump-out section on the south side contains the worship platform in the upper level and storage off of the quad rooms on the lower level. There will be two main entrances to the building from both the north and south ends of the lobby.

The main level floor-plan shows the lobby area, a new nursery area, new storage areas and new restrooms. A new full-size elevator will be located to the left of the north entrance of the lobby.

The lower level floor-plan shows 5 additional classrooms, a community room, a Church library and additional storage areas.

Mr. Chandler testified and stated that the intended use for the facility is to accommodate religious and ministry-related activities. Currently, the Church has two Sunday morning worship services with a middle hour Sunday school for those attending worship. The Sunday school consists of Bible study and teaching for children, youth and adults. On the first Sunday of each month, the Church holds a third service in the evening where communion is celebrated. In addition to Sunday Services, the Church offers a variety of ministry-related activities throughout the week, such as weekday evening meetings of Bible studies, prayer groups and children and youth ministry groups. The Church office is staffed Monday through Friday from 9:00 a.m. until 5:00 p.m.

In addition to ministry activities associated with Sunday services and week-day activities, the Church also has other activities on the premises. As is the case with other churches across Howard County, a variety of groups use the ministry center for various

activities. Per Mr. Chandler, these activities typically have a religious component to them that would not otherwise be found in non-church facilities. Other weekday activities that take place at the Church include the "Upward Basketball" ministry which introduces children to Jesus Christ by creating opportunities to serve through sports. The Church offers use of its facility in support of two homeschool-based groups to support families who choose to home school as an extension of their religious beliefs. Two distinct groups use the facilities and meet at different times, on different days during the week. Homesteaders Support Groups is a ministry of the Church that has provided support to home schooling parents and their children. Their membership includes approximately 80 families that use the Church building for evening adult support groups, and weekday academic enrichment and socialization opportunities for their children. The Homesteaders Support Group uses rooms in the Church on Tuesdays from 9 a.m. to 3 p.m. and on Fridays from 10 a.m. until 4 p.m.

Granite Classical Tutorials is a second support group that has used the Church's facility. Granite Classical Tutorials offers a tutoring service for approximately 60 homeschool families who teach from a classical curriculum at home. They use the facility for parent training, student drama and social events, as well as a two-day per week academic tutoring program. This support group is on site most Mondays and Wednesdays between the hours of 8 a.m. and 4 p.m. Mr. Chandler stated that Church does not operate a school and that neither of the homeschool groups use the facility at the same time and that attendance of children from either of these programs is significantly below the number of children attending a typical Sunday School service. The homeschool groups use the play area between the buildings, the grass area in the southern

portion of the site and the south parking area for limited outdoor activities.

Mr. Chandler stated that the Church opens its facility in ministry to other community group activities such as men's indoor pick-up basketball games on Tuesday evenings and Saturdays, a children's jump-rope group known as the Kangaroo Kids, a community fall festival, vacation Bible school and symposiums and other conferences that are all open to the community.

Lastly, Mr. Chandler stated that the proposed improvements and expansion will not change the character of how the facility is currently used - rather it will enhance and improve the existing usage of the Church. The Church's vision is to improve its spaces for worship, fellowship, adult and youth ministries, and to provide a more welcoming facility to visitors.

13. Charles Alexander, a professional architect, testified and stated that in his opinion, the proposed expansion is typical of expansions for religious projects. Mr. Alexander stated that the expansion is designed for the current population and is in accord with the population using the building.

14. Albert Edwards, a civil engineer, testified to the specific technical details about the site and the criteria for conditional use approval. Mr. Edwards testified that the existing parking lot shown to the west of the proposed addition would be eliminated and landscaped, which would eliminate car lights shining into the adjoining properties. To the west of the proposed addition would be a pad for a trash receptacle. Mr. Edwards testified that this "dumpster" will be enclosed by a brick wall and also screened by means of landscaping. Mr. Edwards stated that the number of parking spaces required by the Zoning Regulations is 184 spaces for a church with 550 seats. The Petitioner will

provide 262 parking spaces. Mr. Edwards stated that the proposed lot coverage, including all buildings on the site, is 8.3 percent of the 6.8 acre Property. The height of the proposed addition will be less than 34 feet in height and that the proposed addition complies with or exceeds all setback requirements in the Zoning Regulations. Mr. Edwards also noted that the front parking lot is in compliance with the required 20 foot use setback from MD 108 right-of-way. Mr. Edwards stated that the Church's access is ideal in that MD 108 permits direct access to the site without having to go through a residential neighborhood. Mr. Edwards stated that new lighting proposed for the parking lot will be arranged so as to direct the light down towards the parking area and away from the adjoining lots.

15. John Householder, an engineer, testified that the proposed stormwater management system will improve existing conditions on the site. Mr. Householder opined that changes made to the stormwater management would mitigate runoff onto adjoining properties in the southwestern portion of the site. Mr. Householder stated that new infiltration trenches will be strategically located on the site to help reduce water runoff onto adjoining properties.

16. Lawrence Sefcik, a traffic engineer, testified that the existing ingress and egress driveway provides safe access to the site. Mr. Sefcik's opinion was based in part upon the Maryland State Highway Administration comments that the existing acceleration and deceleration lanes were adequate. Mr. Sefcik stated that the site distance exiting the site to the left is 1,150 feet and to the right is 800 feet. The site distance in both directions exceeds the AASHTO (American Association of State Highway and Transportation Officials) requirement of 500 feet. Mr. Sefcik had traffic counts

performed during weekday and Sunday peak hours. He opined that the Church driveway was operating at approximately two-thirds of its capacity during weekdays. Per Mr. Sefcik, the Church generated much more traffic on Sunday peak hours, however, the traffic on the related roads was much less. Mr. Sefcik testified that the nearest intersection of Ten Mills Road and MD 108 was currently operating at an acceptable Level of Service "B" and that only two vehicle accidents have been reported eastbound on MD 108 during a six-year time period. Lastly, Mr. Sefcik opined that stacking of vehicles along MD 108 will not be a problem because the traffic light on Ten Mills Road provides gaps in time for vehicles to enter the driveway to the Church.

17. Clifford Lockyer, an adjoining property owner, testified that he has an unobstructed view of the Church property. Mr. Lockyer stated that the Church is a wonderful neighbor. Mr. Lockyer commented that he is delighted with the growth of the Church and enjoys sitting on his porch and observing the various activities taking place on the Church's property.

18. Stephen Rice testified in opposition to the petition and stated that the children playing outside of the existing religious facility create a lot of trash along the MD 108 driveway entrance to his family's property. Mr. Rice voiced his concern over individuals parking on his family's property and people dumping trash items on the back lot. Mr. Rice noted that the portable classrooms look directly into his parents' kitchen, which caused them to enclose their deck for privacy. Mr. Rice stated that the adverse effects created by the Church on its neighbors include increased traffic, more noise, and a decrease in property values.

18. William Rice testified in opposition to the petition and stated that he was

concerned about the increase of children on the site generating more noise, trash and traffic.

19. Donna Rice, an adjoining property owner, testified in opposition to the petition and stated that she does not like the portable classrooms on the site. Mrs. Rice was also concerned that the proposed use would devalue area property values and that an increase in classroom space means more children and traffic.

20. Greg Williams testified in opposition to the petition and stated that he is concerned about the addition of a "de facto" school on the Property.

21. David Cowie testified in opposition to the petition and stated that property values may be reduced due to the planned expansion of the Petitioner. Mr. Cowie proposed a condition that the number of children using the classrooms be limited to 240 children.

22. Joseph Guyton, an adjoining property owner, testified to experiencing serious runoff and erosion problems on his property. Mr. Guyton stated that he was concerned about children playing in the rear open field, noise and car headlights beaming into his patio.

23. Michael Backof testified in opposition and stated that his main concern is the overall impact the proposed expansion would have upon the neighborhood. Mr. Backof stated that an updated traffic study should be done to properly evaluate the impact of the proposed expansion.

24. Katherine Backof testified in opposition to the petition and stated that she is opposed to the way the Church is expanding. She stated that she is not opposed to the church building a sanctuary.

25. Jonathan Murray testified in opposition to the petition and stated that he is concerned about the "school operation use" of the Property. Mr. Murray also voiced his concerns regarding an increase in traffic to a residential area.

26. Man Charurat testified that his concern is that the expansion may worsen the drainage problem in the community.

27. Sujata Rana testified in opposition to the petition and stated that she was concerned that the proposed expansion would create more runoff. Ms. Rana was also concerned about increased traffic and noise generated by the children on the site.

28. Kate Corrieveau, testified in opposition to the petition and stated that her main concern was for the safety of the children who come on her property. Ms. Corrieveau stated that the children are not being properly supervised in the back parking lot. Ms. Corrieveau stated that the Petitioner is actually operating a school on the site.

29. Bruce Corrieveau, an adjoining property owner, testified in opposition to the petition and stated that the Petitioner's current plan is much different from the one that won the special exception approval from the County in 1990, particularly because there is not yet a traditional sanctuary on the site. Mr. Corrieveau stated that the Church operates like a school during the week. Mr. Corrieveau stated that the two home-school groups with more than 200 children total meet at the Church for a combined four days each week. Mr. Corrieveau stated that, regardless of what you call it, the Petitioner's proposal has the feel, function and features of a school.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as follows:

A. General Standards Required for Conditional Use Approval (Section 131.B).

1. General Plan: The Howard County General Plan designates the area in which the Property is located as "Residential Areas" land use. The site is within a residential area with surrounding residential uses. Church facilities are commonly found in residential areas and are presumptively considered compatible with residential land uses. At 6.8 acres, the Property is sufficiently large to accommodate the expansion. The nature of the use, which consists of religious services and education and social events, will not change from that which exists at the Property and are typical of those associated with the use. The Property has direct access to MD 108, a Minor Arterial highway. While the size of the proposed structure and intensity of the use will increase significantly, there was no evidence produced to indicate that the proposed size or intensity of the use would be in disharmony with policies of the General Plan. Rather, the expansion of the facility would appear to be consistent with the General Plan's policies encouraging the revitalization and redevelopment of traditional communities, including the expansion of public facilities such as churches, in order to provide gathering places and "community focal points".

Accordingly, the nature and intensity of use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site, are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district in which it is located, in accordance with Section 131.B.1.a.

2. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires the Board to find that the proposed use "will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses." Virtually every human activity, however, has the potential for adverse impact. Zoning recognizes this fact and, when

concerned with special exceptions, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. The modern seminal case on special exceptions, Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), establishes the standard for resolving special exception issues of adverse impact. Schultz states that:

[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Id. At 22-23, 432 A.2d 1319 (emphasis added).

Thus, the question in the matter before the Board is not whether the proposed Church facility has adverse effects in an R-20 zone. The proper question is whether those adverse effects are greater at the proposed site than they would generally be elsewhere within other R-20 districts of the County. While the Protestants' concerns about the size and the intensity of the use of the facility, increased traffic, noise, trash, stormwater runoff and lowered property values are understandable, the evidence placed before the Board does not sufficiently demonstrate any adverse effects unique or different than those ordinarily associated with the proposed use in the R-20 district.

Much of the testimony presented by the Protestants amounted only to unsupported opinions and conclusions. Unsupported conclusions or fears of witnesses to the effect that a proposed use of property will or will not result in harm amount to nothing more than vague and general expressions of opinion which are lacking in probative value. Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974). Even where supported, however, the Protestants' testimony only tended to show the adverse effects that are

inherent in a religious facility use. The evidence failed to show that such adverse effects would be unique or different than those ordinarily associated with the use in the R-20 zone.

The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not adversely affect vicinal properties to an extent greater than elsewhere in the R-20 district. The proposal consists of the enlargement of a religious facility in order to relieve currently overcrowded conditions. The proposed uses will be conducted primarily within the proposed building, and consist of activities that are normally associated with a religious facility use. The uses will occur primarily on the weekends. The structure will be centrally located on the 6.8 acre lot, away from vicinal properties. The parking will be buffered by existing and proposed landscaping. The existing parking lot shown to the west of the proposed addition would be eliminated and landscaped. Outdoor lighting will comply with Section 134 of the Zoning Regulations. The proposed use will not generate inordinate adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions that would be greater at the subject site than would generally occur elsewhere in the zone or applicable other zones for similar uses, as required by Section 131.B.2.a.

3. Structures and Landscaping: The Petitioner is proposing a major addition to the Church building. The proposed additions comply with the structure and use setbacks for the R-20 zone. The height of the proposed addition would be in compliance with the R-20 district height regulations. The site adjoins an open space area to the east and it is buffered from the residential lots to the east and south. The existing parking lot shown to the west of the proposed addition would be eliminated and new proposed landscaping

will improve the buffer between the uses on the Property and the residential lots to the west. The proposed dumpster will be enclosed by means of a wall and proposed landscaping. The facility will be located away from adjacent residential properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b. of the Zoning Regulations.

4. Parking and Drives: For the proposed total 550 seats in the main assembly area, 184 parking spaces are required and the Petitioner proposes 262 parking spaces. The parking areas will be of adequate size for the particular uses. The parking spaces will be screened by existing landscaping, proposed landscaping and distance. The ingress and egress drive and the internal circulation of traffic flow will provide safe access. The proposed dumpster will be enclosed by a brick wall and landscaping. As such, the parking will be adequate for the religious use. The parking areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties, as required by Section 131.B.2.c.

5. Safe Access: The existing ingress and egress driveway will provide safe access with adequate sight distance. The State Highway Administration comments note that the existing acceleration and deceleration lanes are adequate. The driveway will have over 700 feet of sight distance in both directions. The location of the Church near MD 108 reduces the impact of traffic generated by the use on local roads. As such, the

driveway will provide safe access with adequate sight distance so as to achieve maximum safety, as required by Section 131.B.2.d.

B. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.39).

1. The lot coverage would be approximately 8.3 percent of the 6.8 acre site, well below the maximum lot coverage of 25 percent allowed by Section 131.N.39.a.

2. The structures used primarily for religious activities will not exceed the maximum height allowed in the R-20 district, therefore, Section 131.N.38.b. does not apply.

ORDER

Based upon the foregoing, it is, this 27th day of August 2009, by the Howard County Board of Appeals, **ORDERED**:

That the petition of Columbia Presbyterian Church to expand the 16,700 square-foot existing religious facility with a 17,763 square-foot addition as a Conditional Use in an R-20 (Residential: Single) Zoning District is hereby **GRANTED**, subject to the following conditions:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed structure used primarily for religious activities as described in the petition and as depicted on the Conditional Use plan for the "Columbia Presbyterian Church" submitted to the Board on December 4, 2008, and not to any other activities, uses or structures on the Property.

2. All outdoor lighting shall comply with Section 134 of the Zoning Regulations.


3. The height of the Church will not exceed the maximum allowed by the Zoning Regulations.

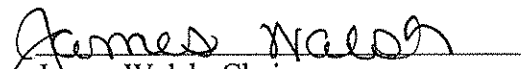
4. Perimeter landscaping or 6-foot high fencing shall be installed and maintained along lot lines as approved by adjoining property owners.

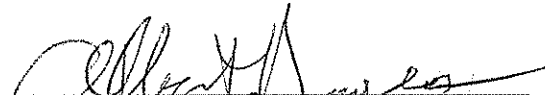
5. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:


HOWARD COUNTY BOARD OF
APPEALS

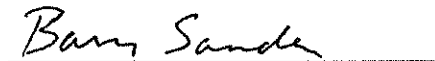

Ann Nicholson, Secretary


James Walsh, Chairperson

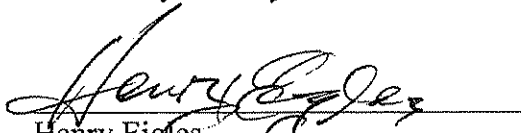

Albert Hayes, Vice-Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

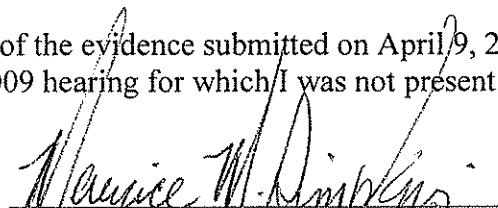

*Maurice Simpkins


Barry Sanders
Assistant County Solicitor


Kevin Doyle


Henry Eigles

* I hereby certify that I reviewed all of the evidence submitted on April 9, 2009 and listened to a recording of the April 9, 2009 hearing for which I was not present.


Maurice Simpkins